

BY: MICHAEL YANOFF, ESQUIRE
Identification No.: 19384
1800 Pennbrook Parkway, Suite 200
Lansdale, PA 19446
215-362-2474

Attorney for Defendant,
Philip Banks

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN SCHUTTER,
Plaintiff

NUMBER 2:07-CV-03823-AB

vs.

DAVID HERSKOWITZ,
Defendant

and

PHILIP BANKS,
Defendant
Plaintiff on the Counterclaim
against Schutter & Herskowitz

ORDER

AND NOW, this _____ day of _____, 2008, upon
consideration of Petitioner's Motion for Sanctions/Continuance, it is hereby
ORDERED and DECREED that:

1. Mr. Marcone deliver the file to the undersigned's office forthwith;
2. Mr. Marcone pay attorney's fees and costs in the amount of \$1,000.00 to
compensate Petitioner for the effort to obtain the records and to review same;
3. The Show Cause Hearing and the Trial in this matter be postponed so as
to allow Petitioner and his counsel a reasonable time to review the records and prepare
for the hearing.

BY THE COURT:

J.

DISCHELL, BARTLE, YANOFF & DOOLEY
BY: MICHAEL YANOFF, ESQUIRE
Identification No.: 19384
1800 Pennbrook Parkway, Suite 200
Lansdale, PA 19446
215-362-2474

Attorney for Defendant
Philip Banks

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN SCHUTTER, Plaintiff	:	NUMBER 2:07-CV-03823-AB
vs.	:	
DAVID HERSKOWITZ, Defendant	:	
and	:	
PHILIP BANKS, Defendant	:	
Plaintiff on the Counterclaim against Schutter & Herskowitz	:	

DEFENDANT, PHILIP BANKS' MOTION FOR SANCTIONS/CONTINUANCE

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:

AND NOW, comes the Defendant, Philip Banks, by his attorney, Michael Yanoff, Esquire, and makes the following Motion for Sanctions against Frank Marcone, Esquire and for a Continuance of the Show Cause Hearing and Trial in the above matter and in support thereof, avers as follows:

1. Petitioner is Defendant in the above-captioned matter.
2. On October 23, 2008, a Show Cause Hearing was held before the Honorable David R. Strawbridge, at which time Frank Marcone, Esquire testified concerning his participation and representation of and with Defendant Philip Banks in the instant matter.

3. At that time, Mr. Marcone did not produce any documents to support any of his contentions and the undersigned, as counsel for Mr. Banks, requested that his file be made available for review and for cross-examination at the next scheduled hearing of December 1, 2008.

4. His Honor, Judge Strawbridge, at page 80-81 of the Notes of Testimony of the October 23, 2008 hearing, ordered that Mr. Marcone make the file available to the undersigned.

5. Despite frequent requests made and promises to have the file available, the file was not made available until Wednesday, November 26, 2008 at 11:30 a.m., at which time counsel for Mr. Banks received the attached letter from Mr. Stretton, Mr. Marcone's attorney, offering to have the file available either "late Wednesday afternoon, Friday or over the weekend".

6. It is relevant that this time period constitutes the Thanksgiving holiday weekend.

7. This late attempt at compliance with the Court's Order severely prejudices Mr. Banks in his ability to cross-examine Mr. Marcone and to review the file in preparation for the hearing.

8. Mr. Marcone's offer that the undersigned have the ability to root through his file cabinet to look at the file is unconscionable and contrary to his agreement before the Court.

9. In fairness to Mr. Marcone, he has filed a document with an exhibit, purporting to list times of phone calls without any further information in an effort to satisfy the request for documentation to support his contentions that he ably represented Mr. Banks in this matter.

10. Those documents, which are part of the Court record, offer no information whatsoever concerning this matter.

11. Petitioner has been severely prejudiced by Mr. Marcone's failure to respond and provide the information as directed and is unable to prepare for the hearing and trial.

WHEREFORE, Petitioner respectfully requests this Honorable Court to order that:

1. Mr. Marcone deliver the file to the undersigned's office forthwith;
2. Mr. Marcone pay attorney's fees and costs in the amount of \$1,000.00 to compensate Petitioner for the effort to obtain the records and to review same;
3. The Show Cause Hearing and the Trial in this matter be postponed so as to allow Petitioner and his counsel a reasonable time to review the records and prepare for the hearing.

Respectfully submitted,

DISCHELL, BARTLE, YANOFF & DOOLEY

BY: S/MICHAEL YANOFF, ESQUIRE

DATED: 11/26/08

SAMUEL C. STRETTON
Attorney at Law
301 S. High St.
P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
(610) 696-2919 (fax)

The Benjamin Franklin House
Suite 206
834 Chestnut Street
Philadelphia, PA 19102
(215) 627-8653

Please reply to:
West Chester

FACSIMILE TRANSMISSION

TO: Michael Yanoff, Esq.
FROM: SAMUEL C. STRETTON, ESQUIRE
DATE: 11-26-08
PAGES: 2 (INCLUDING COVER SHEET)
FAX NO.: 215-362-6722
COMMENTS:

If any of the above numbered pages are not received, please call
(610) 696-4243.

CONFIDENTIALITY NOTE

The documents accompanying this facsimile transmission contain information from the law offices of Samuel C. Stretton, which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this facsimile information is strictly prohibited, and the documents should be returned to this firm immediately. In this regard, if you have received this facsimile in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

EXHIBIT

tabbed

A

SAMUEL C. STRETTON

ATTORNEY AT LAW
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231

(610) 696-4243

FAX (610) 696-2919

November 26, 2008

Michael Yanoff, Esquire
P.O. Box 107
1800 Pennbrook Parkway, Suite 200
Lansdale, PA 19446

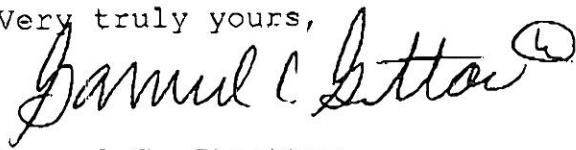
Re: Schutter v. Herskowitz & Banks

Dear Michael:

After we spoke on November 25th, I spoke in the evening to Frank Marcone. He told me that he had met with you and given you a portion of the file. He has the rest of the file in a full file cabinet. He has indicated you are welcome to come over late Wednesday or Friday or perhaps sometime this weekend. Please feel free to call him directly.

I was a little surprised at your Motion, particularly in view of the fact he has given you portions of the file. In any event, the issue is a moot issue now since you can come over and look at the file to your heart's content.

Very truly yours,



Samuel C. Stretton

SCS:mml

cc: Frank Marcone, Esquire

VIA FACSIMILE

BY: MICHAEL YANOFF, ESQUIRE
Identification No.: 19384
1800 Pennbrook Parkway, Suite 200
Lansdale, PA 19446
215-362-2474

Attorney for Defendant,
Philip Banks

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILIP BANKS,
Plaintiff

NUMBER 08-CV-2677

vs.

STEPHEN SCHUTTER,
Defendant

and

DAVID HERSKOWITZ,
Defendant

CERTIFICATE OF SERVICE

I, **Michael Yanoff, Esquire**, hereby certify that I have served a copy of Petitioner, Philip Banks' Motion for Sanctions against Frank Marcone, Esquire and for a continuance of the Show Cause Hearing and Trial upon the person(s) listed below by faxing a copy of same on November 26, 2008:

Jay M. Herskowitz, Esquire
181 Cypress Court
Marlton, NJ 08053
(856) 267-5671 (fax)

James M. Loots, Esquire
236 Massachusetts Avenue, NE
Washington, DC 20002
(202) 315-3515 (fax)

Honorable David R. Strawbridge
4006 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1797
(267) 299-5065 (fax)

Samuel C. Stretton, Esquire
301 S. High Street, P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-2919 (fax)

Date: November 26, 2008 BY: S/MICHAEL YANOFF, ESQUIRE